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Systemax, Inc.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X	
NCR CORPORATION,	:
	:
Plaintiff,	:
	:
v.	:
	:
SYSTEMAX, INC.,	:
	:
Defendant.	:
-----X	

Index No. 06 CV 5915 (LDW, AKT)

**DEFENDANT SYSTEMAX, INC.'S
ANSWER AND COUNTERCLAIMS
WITH JURY DEMAND**

Defendant Systemax, Inc. ("Systemax"), by its undersigned counsel, as and for its answer to the complaint of plaintiff NCR Corporation ("plaintiff" or "NCR") alleges:

PARTIES

1. Systemax lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the complaint, and therefore denies same, leaving plaintiff to its proofs.
2. Systemax admits that it is a corporation organized under the laws of the State of Delaware, having a place of business in Port Washington, New York.

JURISDICTION

3. Paragraph 3 of the complaint states a legal conclusion as to which no response is required. Systemax admits that the complaint purports to state a cause of action for infringement of U.S. patents and that this Court has subject matter jurisdiction for such claims.

VENUE

4. Paragraph 4 of the complaint states a legal conclusion as to which no response is required. Systemax admits that venue in this Court is proper.

STATEMENT OF FACTS

5. Systemax lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the complaint, and therefore denies same, leaving plaintiff to its proofs.

6. Systemax denies the allegations in paragraph 6 of the complaint, but admits that it owns certain Internet websites.

7. Systemax denies the allegations contained in paragraph 7 of the complaint.

FIRST CLAIM FOR RELIEF

8. Systemax incorporates by reference its responses to the allegations set forth in paragraphs 1-7 of the complaint.

9. Systemax denies the allegations in paragraph 9 of the complaint.

SECOND CLAIM FOR RELIEF

10. Systemax incorporates by reference its responses to the allegations set forth in paragraphs 1-9 of the complaint.

11. Systemax denies the allegations in paragraph 11 of the complaint.

THIRD CLAIM FOR RELIEF

12. Systemax incorporates by reference its responses to the allegations set forth in paragraphs 1-11 of the complaint.

13. Systemax denies the allegations in paragraph 13 of the complaint.

FOURTH CLAIM FOR RELIEF

14. Systemax incorporates by reference its responses to the allegations set forth in paragraphs 1-13 of the complaint.

15. Systemax denies the allegations in paragraph 15 of the complaint.

FIFTH CLAIM FOR RELIEF

16. Systemax incorporates by reference its responses to the allegations set forth in paragraphs 1-15 of the complaint.

17. Systemax denies the allegations in paragraph 17 of the complaint.

SIXTH CLAIM FOR RELIEF

18. Systemax incorporates by reference its responses to the allegations set forth in paragraphs 1-17 of the complaint.

19. Systemax denies the allegations in paragraph 19 of the complaint.

SEVENTH CLAIM FOR RELIEF

20. Systemax incorporates by reference its responses to the allegations set forth in paragraphs 1-19 of the complaint.

21. Systemax denies the allegations in paragraph 21 of the complaint.

22. Any paragraph and/or allegation of the complaint not expressly admitted or denied herein, is hereby denied.

FIRST AFFIRMATIVE DEFENSE

23. The asserted claims of U.S. Patent No. 5,699,526 (the “526 patent”) are invalid for failure to satisfy the conditions for patentability as set forth in 35 U.S.C. §§ 102, 103 and 112.

SECOND AFFIRMATIVE DEFENSE

24. The asserted claims of U.S. Patent No. 5,951,643 (the “643 patent”) are invalid for failure to satisfy the conditions for patentability as set forth in 35 U.S.C. §§ 102, 103 and 112.

THIRD AFFIRMATIVE DEFENSE

25. The asserted claims of U.S. Patent No. 6,169,997 (the “997 patent”) are invalid for failure to satisfy the conditions for patentability as set forth in 35 U.S.C. §§ 102, 103 and 112.

FOURTH AFFIRMATIVE DEFENSE

26. The asserted claims of U.S. Patent No. 6,253,203 (the “’203 patent”) are invalid for failure to satisfy the conditions for patentability as set forth in 35 U.S.C. §§ 102, 103 and 112.

FIFTH AFFIRMATIVE DEFENSE

27. The asserted claims of U.S. Patent No. 6,480,855 (the “’855 patent”) are invalid for failure to satisfy the conditions for patentability as set forth in 35 U.S.C. §§ 102, 103 and 112.

SIXTH AFFIRMATIVE DEFENSE

28. The asserted claims of U.S. Patent No. 6,502,096 (“the “’096 patent”) are invalid for failure to satisfy the conditions for patentability as set forth in 35 U.S.C. §§ 102, 103 and 112.

SEVENTH AFFIRMATIVE DEFENSE

29. The asserted claims of U.S. Patent No. 6,519,600 (the “’600 patent”) are invalid for failure to satisfy the conditions for patentability as set forth in 35 U.S.C. §§ 102, 103 and 112.

EIGHTH AFFIRMATIVE DEFENSE

30. Systemax has not infringed, and does not infringe, either directly or indirectly, any valid claim of the ‘526 patent.

NINTH AFFIRMATIVE DEFENSE

31. Systemax has not infringed, and does not infringe, either directly or indirectly, any valid claim of the ‘643 patent.

TENTH AFFIRMATIVE DEFENSE

32. Systemax has not infringed, and does not infringe, either directly or indirectly, any valid claim of the ‘997 patent.

ELEVENTH AFFIRMATIVE DEFENSE

33. Systemax has not infringed, and does not infringe, either directly or indirectly, any valid claim of the ‘203 patent.

TWELFTH AFFIRMATIVE DEFENSE

34. Systemax has not infringed, and does not infringe, either directly or indirectly, any valid claim of the '855 patent.

THIRTEENTH AFFIRMATIVE DEFENSE

35. Systemax has not infringed, and does not infringe, either directly or indirectly, any valid claim of the '096 patent.

FOURTEENTH AFFIRMATIVE DEFENSE

36. Systemax has not infringed, and does not infringe, either directly or indirectly, any valid claim of the '600 patent.

FIFTEENTH AFFIRMATIVE DEFENSE

37. Systemax does not manufacture or create the allegedly infringing systems but rather purchases such systems from manufacturers and/or other parties who are licensed, either expressly or impliedly, by plaintiff under its patent-in-suit. Therefore, Systemax cannot be liable for patent infringement.

SIXTEENTH AFFIRMATIVE DEFENSE

38. Plaintiff is barred in whole or in part from recovering the relief sought in this action by the doctrine of prosecution history estoppel.

SEVENTEENTH AFFIRMATIVE DEFENSE

39. Plaintiff is barred in whole or in part from recovering the relief sought in this action by the doctrines of laches and estoppel. Plaintiff and/or its predecessors in interest waited unreasonably and to the detriment of Systemax in delaying the commencement of an action to enforce its alleged rights under the patents-in-suit or any one of the patents-in-suit.

EIGHTEENTH AFFIRMATIVE DEFENSE

40. Systemax does not infringe any asserted claim of the patents-in-suit or any one of the patents-in-suit because it is licensed, either impliedly or expressly, to take the actions that plaintiff asserts constitute patent infringement.

NINETEENTH AFFIRMATIVE DEFENSE

41. Plaintiff's remedies are limited under 28 U.S.C. § 1498(a) and/or 35 U.S.C. §§ 286 and/or 287. Plaintiff's recovery of costs is limited under 35 U.S.C. § 288.

TWENTIETH AFFIRMATIVE DEFENSE

42. Systemax lacks knowledge of any facts indicating that Plaintiff or its predecessors in interest complied with the requirements of 35 U.S.C. § 287. Plaintiff is thus barred in whole or in part from recovering damages.

TWENTY-FIRST AFFIRMATIVE DEFENSE

43. Systemax reserves the right to bring indemnification claims with respect to plaintiff's allegations in the complaint and to implead suppliers or other parties to the extent necessary.

TWENTY-SECOND AFFIRMATIVE DEFENSE

44. This action is barred by the applicable statute of limitations.

COUNTERCLAIMS

Systemax, by and through its attorneys, as and for its counterclaims against NCR, alleges:

PARTIES

45. Systemax is a Delaware corporation with offices at 11 Harbor Park Drive, Port Washington, New York 11050.

46. Upon information and belief, plaintiff NCR is a Maryland corporation with its principal place of business located at 1700 South Patterson Boulevard, Dayton, Ohio 45479-0001.

JURISDICTION AND VENUE

47. The court has subject matter jurisdiction over these counterclaims under 28 U.S.C. §§ 1338(a), 2201 and 2202.

48. Venue is proper in this district pursuant to the provisions of 28 U.S.C. § 1391(b).

**FIRST COUNTERCLAIM – DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE ‘526 PATENT**

49. Systemax repeats and realleges each and every paragraph 1-48 of this answer as though fully set forth herein.

50. In this action, plaintiff has claimed that Systemax is infringing the ‘526 patent.

51. Based on information and belief, Systemax asserts that manufacturing, using, selling and/or offering to sell its products does not infringe any valid claim of the ‘526 patent.

52. By reason of plaintiff’s charges of patent infringement, and Systemax’ denial of those charges, a justiciable and actual controversy exists between plaintiff on the one hand and Systemax on the other hand with respect to plaintiff’s assertion of infringement of the ‘526 patent, and Systemax’ denial thereof.

53. Systemax has no adequate remedy at law.

54. By reason of the foregoing, Systemax seeks a declaration that it does not infringe any valid claim of the ‘526 patent, and that plaintiff be enjoined from further charging, or threatening to charge, Systemax or its customers with infringement of the ‘526 patent.

**SECOND COUNTERCLAIM – DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE ‘643 PATENT**

55. Systemax repeats and realleges each and every paragraph 1-54 of this answer as though fully set forth herein.

56. In this action, plaintiff has claimed that Systemax is infringing the ‘643 patent.

57. Based on information and belief, Systemax asserts that manufacturing, using, selling and/or offering to sell its products does not infringe any valid claim of the '643 patent.

58. By reason of plaintiff's charges of patent infringement, and Systemax' denial of those charges, a justiciable and actual controversy exists between plaintiff on the one hand and Systemax on the other hand with respect to plaintiff's assertion of infringement of the '643 patent, and Systemax' denial thereof.

59. Systemax has no adequate remedy at law.

60. By reason of the foregoing, Systemax seeks a declaration that it does not infringe any valid claim of the '643 patent, and that plaintiff be enjoined from further charging, or threatening to charge, Systemax or its customers with infringement of the '643 patent.

**THIRD COUNTERCLAIM – DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE '997 PATENT**

61. Systemax repeats and realleges each and every paragraph 1-60 of this answer as though fully set forth herein.

62. In this action, plaintiff has claimed that Systemax is infringing the '997 patent.

63. Based on information and belief, Systemax asserts that manufacturing, using, selling and/or offering to sell its products does not infringe any valid claim of the '997 patent.

64. By reason of plaintiff's charges of patent infringement, and Systemax' denial of those charges, a justiciable and actual controversy exists between plaintiff on the one hand and Systemax on the other hand with respect to plaintiff's assertion of infringement of the '997 patent, and Systemax' denial thereof.

65. Systemax has no adequate remedy at law.

66. By reason of the foregoing, Systemax seeks a declaration that it does not infringe any valid claim of the '997 patent, and that plaintiff be enjoined from further charging, or threatening to charge, Systemax or its customers with infringement of the '997 patent.

**FOURTH COUNTERCLAIM – DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE '203 PATENT**

67. Systemax repeats and realleges each and every paragraph 1-66 of this answer as though fully set forth herein.

68. In this action, plaintiff has claimed that Systemax is infringing the '203 patent.

69. Based on information and belief, Systemax asserts that manufacturing, using, selling and/or offering to sell its products does not infringe any valid claim of the '203 patent.

70. By reason of plaintiff's charges of patent infringement, and Systemax' denial of those charges, a justiciable and actual controversy exists between plaintiff on the one hand and Systemax on the other hand with respect to plaintiff's assertion of infringement of the '203 patent, and Systemax' denial thereof.

71. Systemax has no adequate remedy at law.

72. By reason of the foregoing, Systemax seeks a declaration that it does not infringe any valid claim of the '203 patent, and that plaintiff be enjoined from further charging, or threatening to charge, Systemax or its customers with infringement of the '203 patent.

**FIFTH COUNTERCLAIM – DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE '855 PATENT**

73. Systemax repeats and realleges each and every paragraph 1-72 of this answer as though fully set forth herein.

74. In this action, plaintiff has claimed that Systemax is infringing the '855 patent.

75. Based on information and belief, Systemax asserts that manufacturing, using, selling and/or offering to sell its products does not infringe any valid claim of the '855 patent.

76. By reason of plaintiff's charges of patent infringement, and Systemax' denial of those charges, a justiciable and actual controversy exists between plaintiff on the one hand and Systemax on the other hand with respect to plaintiff's assertion of infringement of the '855 patent, and Systemax' denial thereof.

77. Systemax has no adequate remedy at law.

78. By reason of the foregoing, Systemax seeks a declaration that it does not infringe any valid claim of the '855 patent, and that plaintiff be enjoined from further charging, or threatening to charge, Systemax or its customers with infringement of the '855 patent.

**SIXTH COUNTERCLAIM – DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE '096 PATENT**

79. Systemax repeats and realleges each and every paragraph 1-78 of this answer as though fully set forth herein.

80. In this action, plaintiff has claimed that Systemax is infringing the '096 patent.

81. Based on information and belief, Systemax asserts that manufacturing, using, selling and/or offering to sell its products does not infringe any valid claim of the '096 patent.

82. By reason of plaintiff's charges of patent infringement, and Systemax' denial of those charges, a justiciable and actual controversy exists between plaintiff on the one hand and Systemax on the other hand with respect to plaintiff's assertion of infringement of the '096 patent, and Systemax' denial thereof.

83. Systemax has no adequate remedy at law.

84. By reason of the foregoing, Systemax seeks a declaration that it does not infringe any valid claim of the '096 patent, and that plaintiff be enjoined from further charging, or threatening to charge, Systemax or its customers with infringement of the '096 patent.

**SEVENTH COUNTERCLAIM – DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE ‘600 PATENT**

85. Systemax repeats and realleges each and every paragraph 1-84 of this answer as though fully set forth herein.

86. In this action, plaintiff has claimed that Systemax is infringing the ‘600 patent.

87. Based on information and belief, Systemax asserts that manufacturing, using, selling and/or offering to sell its products does not infringe any valid claim of the ‘600 patent.

88. By reason of plaintiff’s charges of patent infringement, and Systemax’ denial of those charges, a justiciable and actual controversy exists between plaintiff on the one hand and Systemax on the other hand with respect to plaintiff’s assertion of infringement of the ‘600 patent, and Systemax’ denial thereof.

89. Systemax has no adequate remedy at law.

90. By reason of the foregoing, Systemax seeks a declaration that it does not infringe any valid claim of the ‘600 patent, and that plaintiff be enjoined from further charging, or threatening to charge, Systemax or its customers with infringement of the ‘600 patent.

**EIGHTH COUNTERCLAIM – DECLARATORY JUDGMENT OF
INVALIDITY OF THE ‘526 PATENT**

91. Systemax repeats and realleges each and every paragraph 1-90 of this answer as though fully set forth herein.

92. Based on information and belief, the ‘526 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

93. By reason of plaintiff’s charges of patent infringement, Systemax’ denial of those charges, and Systemax’ assertion that the ‘526 patent is invalid, a justiciable and actual controversy exists between plaintiff on the one hand and Systemax on the other hand with respect to Systemax’ assertion that the ‘526

patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

94. Systemax has no adequate remedy at law.

95. By reason of the foregoing, Systemax seeks a declaration that the '526 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

**NINTH COUNTERCLAIM – DECLARATORY JUDGMENT OF
INVALIDITY OF THE '643 PATENT**

96. Systemax repeats and realleges each and every paragraph 1-95 of this answer as though fully set forth herein.

97. Based on information and belief, the '643 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

98. By reason of plaintiff's charges of patent infringement, Systemax' denial of those charges, and Systemax' assertion that the '643 patent is invalid, a justiciable and actual controversy exists between plaintiff on the one hand and Systemax on the other hand with respect to Systemax' assertion that the '643 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

99. Systemax has no adequate remedy at law.

100. By reason of the foregoing, Systemax seeks a declaration that the '643 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

**TENTH COUNTERCLAIM – DECLARATORY JUDGMENT OF
INVALIDITY OF THE '997 PATENT**

101. Systemax repeats and realleges each and every paragraph 1-100 of this answer as though fully set forth herein.

102. Based on information and belief, the '997 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

103. By reason of plaintiff's charges of patent infringement, Systemax' denial of those charges, and Systemax' assertion that the '997 patent is invalid, a justiciable and actual controversy exists between plaintiff on the one hand and Systemax on the other hand with respect to Systemax' assertion that the '997 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

104. Systemax has no adequate remedy at law.

105. By reason of the foregoing, Systemax seeks a declaration that the '997 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

**ELEVENTH COUNTERCLAIM – DECLARATORY JUDGMENT OF
INVALIDITY OF THE '203 PATENT**

106. Systemax repeats and realleges each and every paragraph 1-105 of this answer as though fully set forth herein.

107. Based on information and belief, the '203 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

108. By reason of plaintiff's charges of patent infringement, Systemax' denial of those charges, and Systemax' assertion that the '203 patent is invalid, a justiciable and actual controversy exists between plaintiff on the one hand and Systemax on the other hand with respect to Systemax' assertion that the '203 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

109. Systemax has no adequate remedy at law.

110. By reason of the foregoing, Systemax seeks a declaration that the '203 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

**TWELFTH COUNTERCLAIM – DECLARATORY JUDGMENT OF
INVALIDITY OF THE ‘885 PATENT**

111. Systemax repeats and realleges each and every paragraph 1-110 of this answer as though fully set forth herein.

112. Based on information and belief, the ‘885 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

113. By reason of plaintiff’s charges of patent infringement, Systemax’ denial of those charges, and Systemax’ assertion that the ‘885 patent is invalid, a justiciable and actual controversy exists between plaintiff on the one hand and Systemax on the other hand with respect to Systemax’ assertion that the ‘885 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

114. Systemax has no adequate remedy at law.

115. By reason of the foregoing, Systemax seeks a declaration that the ‘885 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

**THIRTEENTH COUNTERCLAIM – DECLARATORY JUDGMENT OF
INVALIDITY OF THE ‘096 PATENT**

116. Systemax repeats and realleges each and every paragraph 1-115 of this answer as though fully set forth herein.

117. Based on information and belief, the ‘096 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

118. By reason of plaintiff’s charges of patent infringement, Systemax’ denial of those charges, and Systemax’ assertion that the ‘096 patent is invalid, a justiciable and actual controversy exists between plaintiff on the one hand and Systemax on the other hand with respect to Systemax’ assertion that the ‘096 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

119 Systemax has no adequate remedy at law.

120. By reason of the foregoing, Systemax seeks a declaration that the '096 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

**FOURTEENTH COUNTERCLAIM – DECLARATORY JUDGMENT OF
INVALIDITY OF THE '600 PATENT**

121. Systemax repeats and realleges each and every paragraph 1-120 of this answer as though fully set forth herein.

122. Based on information and belief, the '600 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

123. By reason of plaintiff's charges of patent infringement, Systemax' denial of those charges, and Systemax' assertion that the '600 patent is invalid, a justiciable and actual controversy exists between plaintiff on the one hand and Systemax on the other hand with respect to Systemax' assertion that the '600 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

124 Systemax has no adequate remedy at law.

125. By reason of the foregoing, Systemax seeks a declaration that the '600 patent is invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

RESERVATION OF RIGHTS

Systemax is asserting the above affirmative defenses and counterclaims based on incomplete information because it has not yet been afforded any discovery in this case. Systemax' investigation of its defenses and counterclaims is continuing and Systemax reserves the right to supplement or amend such defenses and/or counterclaims if and when further relevant information becomes available.

WHEREFORE, defendant Systemax, Inc. prays for judgment in its favor and an order:

1. dismissing, with prejudice, the complaint of plaintiff NCR Corporation, insofar as it relates to Systemax;

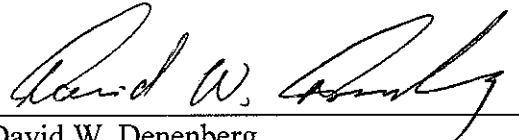
2. declaring that each of the patents-in-suit (the '526, '643, '997, '203, '855, '096 and '600 patents) is not infringed by Systemax;
3. declaring that each of the patents-in-suit (the '526, '643, '997, '203, '855, '096 and '600 patents) is invalid;
4. enjoining plaintiff NCR Corporation from asserting charges of infringement of each of the patents-in-suit (the '526, '643, '997, '203, '855, '096 and '600 patents);
5. declaring that this is an exceptional case under 35 U.S.C. § 285 and awarding Systemax its costs and attorneys' fees incurred in this action; and
6. granting Systemax such other and further relief as this Court may deem just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Systemax hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

DAVIDOFF MALITO & HUTCHER LLP



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Systemax, Inc.*

Dated: August 17, 2007

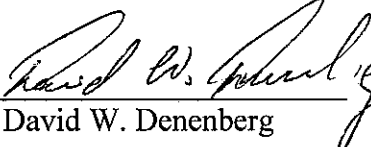
CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2007, I served a true and accurate copy of Defendant Systemax, Inc.'s Answer and Counterclaims with Jury Demand, on counsel for plaintiff by U.S. First Class Mail, postage prepaid at the following address:

Clifford R. Michel, Esq.
Paul R. Gupta, Esq.
ORRICK HERRINGTON & SUTCLIFFE, LLP
666 Fifth Avenue
New York, New York 10103

and on counsel for the plaintiff by using the Court's CM/ECF system so that a copy was sent to the following person automatically via email:

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